

Assault

There are two general classifications of assault: simple and aggravated. A simple assault occurs when a person offers or attempts bodily harm to another person by means of unlawful violence or force. The violence or force must be unlawful. But the attempt or offer does not have to be carried out. If the attempt or offer is carried out, the criminal act is labeled battery. Because an attempt to act must precede the carrying out of an act, proof of battery supports a charge of assault. See, generally, Part IV, paragraph 54, MCM.

An assault made with a dangerous weapon or object likely to produce death or grievous bodily harm is an aggravated assault. Almost any object may be thought capable of causing the injury. Courts have held that bottles, beer glasses, rocks, and pieces of pipe, to name a few, may be used in a way likely to cause death or grievous bodily harm. On the other hand, an unloaded pistol used as a firearm and not as a bludgeon, is not considered a dangerous weapon. It has no force likely to cause grievous bodily harm. This is true whether the assailant knows it is unloaded or not.

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And assault made to deliberately inflict grievous bodily harm is an aggravated assault. If the intended grievous harm occurs, the assault is classed as aggravated whether or not a weapon is present. Grievous bodily harm does not include minor injuries, like a black eye or a bloody nose. But it does include fractured or dislocated bones, deep cuts, torn members of the body, and seriously damaged internal organs.

Many times it is hard to tell the difference between aggravated assault and simple assault. Consult your local SJA to be sure.

Sometimes assaults occur when the assailant's intent is to commit murder, voluntary manslaughter, rape, robbery, arson, burglary, housebreaking, or the like. Assaults occurring with an intent to commit a crime other than the assault are rarely investigated as assaults. They are usually processed as part of the investigation of the greater, intended crime.

SUBSTANTIATING AND INVESTIGATING

When an assault is reported, your first effort is to learn if the offense did occur. Do this by questioning the victim, the attending doctor, and any witnesses. If the act did occur, then begin investigating the offense.

Question the victim at least twice. A victim may recall more information as he or she has time to reflect. In your later interview with the victim, go over information from prior questioning. This also allows you to double check the victim's story. A victim may have a reason to keep back the truth. For instance, a man assaulted by the husband of a woman with whom he has become involved may deny knowing why he was assaulted.

Initial questioning should not be lengthy. Lengthy questioning delays the search of the crime scene. But if the medical officer believes the victim may die, try to get as much information as you can, as soon as possible. This should be done only with medical approval. When you can, use a tape recorder to record statements or declarations of the dying.

During the initial questioning, ask the victim's permission to take photos to record visible injuries. Use color film. Take another set of photos about three days later to show the full extent of the injuries. If the assailant used a weapon, ask the victim to describe it.

The victim may also be able to describe the assailant. The victim may know the assailant and may even suspect the assailant's motive.

If a victim does not know why he or she was assaulted, the assailant may have made a mistake. Or perhaps the victim interrupted some unlawful act in progress.

SEARCHING THE SCENE

After questioning the victim, search the crime scene. Your search may provide leads for further questioning.

If the victim is not in need of quick medical treatment, you can search while the victim is still on the scene. If the victim is not present during the search, you may want to go to the scene with him after the initial search has been made. Ask the victim to "talk you through the incident." Have him or her describe the action and show you where it took place. This may give you a better understanding of how the assault happened. And it could lead to additional evidence.

After the initial facts are assembled, you may want to talk with the medical officer who treated the victim. Try to learn the estimated age of the injuries. You may also be able to learn the approximate time the injury occurred. The medical officer can tell you if the injuries could have occurred in the way the victim described. The nature of an injury may prevent a victim from giving a true account of what happened. Sometimes a victim is incapacitated by alcohol, drugs, or physical problems. Any of these may affect a victim's ability to recall what happened. The medical officer also may be able to help identify the type of weapon that could have caused the injuries.

QUESTIONING WITNESSES AND SUSPECTS

After searching the crime scene, locate and question witnesses to the assault as soon as you can. Ask about unusual activity in the area. Question persons living, working, or in the vicinity of the scene. Ask about persons seen or believed to have been in the area.

Sometimes witnesses to an assault are reluctant to answer questions. They may fear the assailant. Or the assailant may be a friend.

When you are ready to interrogate a suspect, base your questions on information you develop during the investigation. Did the person have a motive and a chance to commit the assault? Discovering someone with the motive and the chance to commit the assault

may lead you to the assailant. Was the suspect in the vicinity of the scene? Did the suspect have access to the type of weapon used in the assault? Can any evidence found at the scene be tied to the suspect? Finally, are the suspect's alibis supported?

If questioning fails to identify the assailant, check the victim's background, associates, and activities. Check police and personnel records to see if the victim has been involved in previous incidents. Question relatives, members of his military unit, neighbors, and associates. You may find that the victim has a motive for holding back information. This can be used as a basis for further questioning of the victim, suspect, and witnesses.